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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte DOUGLAS BROWN DILLARD, ROBERT BRADFORD GRAY,
THOMAS PAUL SCHMITT, DAVID ALAN SPENCER,
and JOHN ASHWELL RAYMOND

Appeal 2015-000089¹
Application 12/496,004²
Technology Center 3600

Before BIBHU R. MOHANTY, NINA L. MEDLOCK, and
ROBERT J. SILVERMAN, *Administrative Patent Judges*.

MEDLOCK, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–20. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

¹ Our decision references Appellants' Appeal Brief ("App. Br.," filed March 28, 2014) and Reply Brief ("Reply Br.," filed September 23, 2014), and the Examiner's Answer ("Ans.," mailed July 31, 2014), and Non-Final Office Action ("Non-Final Act.," mailed October 28, 2013).

² Appellants identify Orderite, Inc. as the real party in interest. App. Br. 2.

CLAIMED INVENTION

Appellants' claimed invention relates to "a food safety management system, including a web portal for management and reporting and a handheld computing device for checklist completion" (Spec. ¶ 92).

Claims 1, 13, and 20, reproduced below, are the independent claims on appeal:

1. A system, comprising:
 - at least one computing device;
 - a handheld computing device at each one of a plurality of food service establishments; and
 - a web portal application executable in the at least one computing device, the web portal application comprising:
 - logic that generates a checklist for each one of the food service establishments, each checklist including a plurality of tasks to be performed at the respective one of the food service establishments;
 - logic that customizes a subset of the checklists for a respective subset of the food service establishments, the subset of the checklists having at least one task in common being customized;
 - logic that sends each checklist to the handheld computing device at the respective one of the food service establishments;
 - logic that obtains a plurality of responses to each checklist from the handheld computing device at each respective one of the food service establishments, the responses including data entered on a touchscreen of the handheld computing device, temperature data measured by at least one stationary sensor, and food temperature data measured by at least one handheld temperature sensor; and
 - logic that generates at least one network page summarizing the responses to the checklist for at least one of the food service establishments.

13. A system, comprising:
 - a handheld computing device including a touchscreen; and
 - a checklist application executable in the handheld computing device, the checklist application comprising:
 - logic that obtains a checklist from at least one server, the checklist including a plurality of tasks to be performed in a food service establishment;
 - logic that displays the checklist on the touchscreen to a user, with the logic obtaining confirmation on the touchscreen from the user whether at least one of the tasks has been completed;
 - logic that verifies that at least one of the tasks has been completed by scanning an identifier that is present at a specific location in the food service establishment;
 - logic that obtains at least one temperature reading from a handheld temperature sensor having a probe inserted into a food item at the food service establishment responsive to at least one of the tasks; and
 - logic that sends task completion data and food temperature data from the handheld computing device to the at least one server.
20. A method, comprising the steps of:
 - obtaining, in a handheld computing device, a checklist from at least one server,
 - the checklist including a plurality of tasks to be performed in a food service establishment;
 - displaying the checklist on a touchscreen of the handheld computing device to a user and obtains confirmation on the touchscreen from the user whether at least one of the tasks has been completed;
 - verifying that at least one of the tasks has been completed by inputting an identifier at a location in the food service establishment;
 - obtaining at least one temperature reading and at least one humidity reading obtained from at least one stationary sensor monitoring a food storage environment;
 - and sending task completion data, temperature data, and humidity data to the at least one server.

REJECTIONS

Claims 1–20 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter.

Claims 1–11, 13–16, and 18–20 are rejected under 35 U.S.C. § 103(a) as unpatentable over Mobley (US 2008/0120188 A1, pub. May 22, 2008), Kates (US 2006/0213904 A1, pub. Sept. 28, 2006), and Dillard (US 2006/0149642 A1, pub. July 6, 2006).

ANALYSIS

Non-Statutory Subject Matter

Appellants argue claims 1–20 as a group (Reply Br. 4–7). We select independent claim 20 as representative. The remaining claims stand or fall with claim 20. *See* 37 C.F.R. §41.37(c)(1)(iv).

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas” are not patentable. *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014).

In judging whether claim 20 falls within the excluded category of abstract ideas, we are guided in our analysis by the Supreme Court’s two-step framework, described in *Mayo* and *Alice*. *Id. at* 2355 (citing *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1296–97 (2012)). In accordance with that framework, we first determine whether the claim is “directed to” a patent-ineligible abstract idea. If so, we then consider the elements of the claim both individually and as “an ordered

combination” to determine whether the additional elements “transform the nature of the claim” into a patent-eligible application of the abstract idea. *Id.* This is a search for an “inventive concept” – an element or combination of elements sufficient to ensure that the claim amounts to “significantly more” than the abstract idea itself. *Id.*

Appellants maintain here that the Examiner has failed to establish a prima facie case under § 101 because the Examiner has not provided any analysis or reasoning as to “why all claimed embodiments of the present application allegedly constitute an unpatentable . . . idea, much less . . . a reasoned analysis of the actual claim language recited in claims 1–20” (Reply Br. 5). Yet the law is well-established that the USPTO carries its procedural burden of establishing a prima facie case when its rejection satisfies the requirements of 35 U.S.C. § 132 by notifying the applicant of the reasons for rejection, “together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.” *See In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011).

In rejecting claims 1–20 under § 101, the Examiner notified Appellants that claims 1–20 are directed to an abstract idea, i.e., food safety management, and that the additional claim elements or combination of elements amount to no more than “a method of organizing human activities and an abstract idea limited solely by mere instructions to implement the idea on a computer or by recitation of generic computer structure that serves to perform generic computer functions that are well-understood, routine, and conventional activities previously known to the industry” (Ans. 3). The Examiner, thus, notified Appellants of the reasons for the rejection “together with such information and references as may be useful in judging of the

propriety of continuing the prosecution of [the] application.” 35 U.S.C. § 132. And, in doing so, the Examiner set forth a prima facie case of unpatentability.

Appellants did not respond in their Reply Brief by asserting that they did not understand the Examiner’s new ground of rejection. Instead, Appellants’ understanding of the rejection is clearly manifested by their response as set forth in the Reply Brief (Reply Br. 5–7).

Turning step 1 of the *Alice* analysis, claim 20 recites a method comprising (1) obtaining a checklist identifying a plurality of tasks to be performed at a food service establishment; (2) displaying the checklist to a user and obtaining confirmation whether at least one of the tasks has been completed; (3) verifying that at least one of the tasks has been completed; (4) obtaining temperature and humidity readings from at least one sensor monitoring a food storage environment; and (5) transmitting the task completion data, temperature data, and humidity data to a server. We agree with the Examiner that the claim is, thus, directed to organizing human activities, namely, data gathering, which is an abstract idea. *See, e.g., Electric Power Group, LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016) (characterizing collecting information, analyzing information by steps people go through in their minds, or by mathematical algorithms, and presenting the results of collecting and analyzing information, without more, as matters within the realm of abstract ideas); *Content Extraction & Transmission v. Wells Fargo Bank*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (finding claims for extracting data from documents, recognizing specific information, and storing that information in memory in automated teller machines (ATM) were directed to patent-ineligible abstract ideas). This also

is consistent with the Specification, which explicitly discloses that “[t]he system replaces conventional pen-and-paper checklists and automates data gathering” (Spec. ¶ 13).

Because we find that claim 20 is directed to an abstract idea, the claim must include an “inventive concept” in order to be patent-eligible, i.e., there must be an element or combination of elements that is sufficient to ensure that the claim in practice amounts to significantly more than the abstract idea itself. Here, we find, as did the Examiner, no additional claim elements or combination of elements that transform the nature of the claim into a patent-eligible application of the abstract idea.

Appellants argue that the claims are not directed solely to a method of organizing human activities and point out that claim 1, for example, recites a combination of physical hardware (i.e., “at least one computing device,” a handheld computing device,” “at least one stationary sensor,” and “at least one handheld sensor”), and that the claim specifically recites “***logic that generates*** at least one network page summarizing the responses to the checklist for at least one of the food service establishments’ in a ‘web portal application’” — an activity that, in the context of the claim, is not performed by a human (Reply Br. 5). Appellants also argue that the claims do not involve merely a general purpose computer (*id.* at 6). Yet we find no indication in the Specification that the system is implemented other than by using conventional components, e.g., generic computer components to perform generic computer functions (*see, e.g., id.* ¶ 15 (“The hand held computing device 103 may include a personal digital assistant, a cell phone, a laptop, or some other type of handheld computing device”), which is not enough to transform the nature of the claim into a patent-eligible application

of the abstract idea. *See Alice Corp.*, 134 S. Ct. at 2358 (holding that if a patent’s recitation of a computer amounts to a mere instruction to implement an abstract idea on a computer, that addition cannot impart patent eligibility).

In view of the foregoing, we sustain the Examiner’s rejection under 35 U.S.C. § 101 of claim 20, and claims 1–19, which fall with claim 20.

Obviousness

Independent Claim 1 and Dependent Claims 3, 5, 6, 10, and 11

We are not persuaded by Appellants’ argument that the Examiner erred in rejecting claim 1 under 35 U.S.C. § 103(a) because none of Mobley, Kates, and Dillard, individually or in combination, discloses or suggests both stationary and hand-held sensors, i.e., “logic that obtains a plurality of responses . . . including . . . temperature data measured by at least one stationary sensor, and food temperature data measured by at least one handheld temperature,” as recited in claim 1 (App. Br. 5–11).

Mobley is directed to an automated system for collecting, storing, and retrieving temperature data relative to food items and food storage equipment, and discloses that the system includes a hand-held display and data input unit coupled to a temperature probe (Mobley, Abstract). Kates similarly discloses a system and method for monitoring conditions that affect the quality of food being served, and discloses that sensors, such as temperature probes, can be incorporated in various types of food containers (Kates, Abstract).

Appellants argue that the rejection of claim 1 is improper and should be reversed because neither Mobley nor Kates discloses or suggests obtaining temperature data from both a stationary sensor and a handheld

temperature sensor. Appellants assert that using both types of sensors is important in providing data relevant to food safety (App. Br. 8). But Appellants offer no evidence or, indeed, any technical reasoning to support that statement.

There is no indication in the record that obtaining temperature readings from both a stationary sensor and a handheld temperature sensor as opposed to obtaining temperature readings from a held-held device, as disclosed in Mobley, alters, or in any way, affects the structure or function of the claimed system. As such, it cannot be relied on to distinguish over the prior art for purposes of patentability.

We also are not persuaded by Appellants' argument that Mobley, on which the Examiner relies, fails to disclose or suggest "a web portal application . . . comprising: logic that generates a checklist for each one of the food service establishments, each checklist including a plurality of tasks to be performed at the respective one of the food service establishments [and] logic that customizes a subset of the checklists for a respective subset of the food service establishments" as recited in claim 1 (App. Br. 11–12).

Appellants reproduce the Examiner's rejection set forth at page 8 of the Non-Final Office Action, and argue that Mobley's website (which the Examiner compares to the claimed "web portal application"), as disclosed in paragraph 10, "appears to provide functionality only for 'loading and accessing . . . logs'" and "does not appear to relate in any way to generating 'a checklist for each one of the food service establishments' as claimed" (*id.*). Appellants also summarily assert, "Mobley does not appear to relate to multiple food service establishments. Therefore, Mobley does not show or suggest generating a checklist for each one of *a plurality of food service*

establishments, much less customizing ‘a subset of the checklists for a respective subset of the food service establishments’ as claimed” (App. Br. 12).

The difficulty with Appellants’ argument is that it is not responsive to the Examiner’s rejection. The Examiner does not merely rely on paragraph 10 of Mobley as disclosing the argued limitations. Instead, the Examiner cites paragraphs 7–10, 20–30, and 45 (*see* Non-Final Act. 8–9; *see also* Ans. 6–7). Absent further explanation, we are not persuaded that the Examiner erred in finding that Mobley discloses a web portal application, as called for in claim 1.

In view of the foregoing, we sustain the Examiner’s rejection of claim 1 under 35 U.S.C. § 103(a). For the same reason, we also sustain the Examiner’s rejection of dependent claims 3, 5, 6, 10, and 11, which are not argued separately except based on their dependence from claim 1 (App. Br. 28).

Independent Claim 13 and Dependent Claims 14–16, 18, and 19

Claim 13 recites a checklist application executable in the handheld computing device comprising, *inter alia*, “logic that verifies that at least one of the tasks has been completed by scanning an identifier that is present at a specific location in the food service establishment,” as recited in claim 13 (App. Br. 13–16). The Examiner cites paragraphs 21–26, 39, and 51 of Mobley as disclosing “identification of operational modes, food storage location; serial number data field 150,” which the Examiner equates to the claimed “identifier” (Non-Final Act. 9–10; *see also* Ans. 7); however, the Examiner acknowledges that Mobley does not disclose scanning, and relies

on Kates to cure this deficiency (Non-Final Act. 12 (citing Kates ¶¶ 8–10, 88, 103–105, Figs. 12A–C)).

Addressing “serial number data field 150,” Appellants point to paragraph 29 of Mobley as disclosing that serial number data field 150 allows a user to enter the serial number of the handheld device used in performing the temperature readings, and Appellants argue that the serial number is used merely to identify the particular device, not to verify that any task was completed (App. Br. 13–14). Further addressing Kates, Appellants note that Kates discloses a monitor tag that can be an RFID device, but Appellants argue that even if the monitor tag corresponds to an identifier, Kates does not disclose or suggest that the tag is present at a specific location, but rather discloses that the tag accompanies a food item in a food serving container, which can be at any location (*id.* at 15).

Appellants’ argument is not persuasive of error on the part of the Examiner at least because, again, the argument is not fully responsive to the Examiner’s rejection. Appellants argue that the serial number of the device cannot be used as an identifier to verify that a task has been completed. However, Appellants do not explain why a designation of the food storage location, which the Examiner also compares to the claimed “identifier, could not be used for this purpose.

Absent further explanation, we are not persuaded that the Examiner erred in rejecting claim 13 under 35 U.S.C. § 103(a). Therefore, we sustain the Examiner’s rejection of claim 13 under 35 U.S.C. § 103(a). We also sustain the rejection of dependent claims 14–16, 18, and 19, which are not argued separately except based on their dependence from claim 13 (App. Br. 28).

Independent Claim 20

Appellants' argument with respect to claim 20 are substantially identical to Appellants' arguments with respect to claims 1 and 13, which we found unpersuasive. Therefore, we sustain the Examiner's rejection of claim 20 for the same reasons set forth above with respect to claims 1 and 13.

Dependent Claim 2

Claim 2 depends from independent claim 1, and recites that the web portal application further comprises "logic that generates a map displaying a status indicator at a geographic location of each of at least one of the food service establishments, the status indicator selected based at least in part on the responses associated with the respective food service establishment."

Appellants reproduce the Examiner's rejection as set forth in the Non-Final Office Action, and summarily assert that none of the cited references discloses or suggests the claimed subject matter (App. Br. 20).

Appellants' assertion does not rise to the level of a substantive argument for patentability. *Cf. In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (holding that the Board reasonably interpreted 37 C.F.R. § 41.37(c)(1)(vii) as requiring "more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art"). Therefore, we sustain the Examiner's rejection of claim 2 under 35 U.S.C. § 103(a).

Dependent Claim 4

Claim 4 depends from claim 3, which depends in turn from independent claim 1. Claim 3 recites that the web portal application further comprises "logic that generates a report for each food service establishment

including at least the respective temperature data and respective food temperature data for a time interval.” Claim 4 recites that “the time interval has not been completed and the report includes a plurality of regions for future temperature data and future food temperature data.”

We have reviewed paragraphs 8–10 of Mobley, on which the Examiner relies (Non-Final Act. 6–7). And we agree with Appellants that although Mobley discloses that food item and food storage equipment temperature measurements are downloaded from the handheld device to a computer, which generates a temperature log report, we find nothing in the cited paragraphs that discloses or suggests that the log report is for a “time interval [that] has not been completed and . . . includes a plurality of regions for future temperature data and future food temperature data,” as recited in claim 4 (App. Br. 21–22).

Therefore, we do not sustain the Examiner’s rejection of claim 4 under 35 U.S.C. § 103(a).

Dependent Claim 7

Claim 7 depends from claim 1, and recites that the stationary sensor comprises:

- a base unit configured to communicate wirelessly with the handheld computing device; and

- a plurality of sensors placed inside a food storage apparatus having a cabinet and a door;

- wherein the sensors are connected to the base unit by at least one cable disposed under a surface of a gasket of the door, the cable being substantially flat so as to permit the surface of the gasket to seal against the cable and a surface of the cabinet without an air gap.

In rejecting claim 7 under 35 U.S.C. § 103(a), the Examiner finds that Mobley discloses a base unit (computer or processing device 29) and a plurality of sensors (temperature probe 24) connected to the base unit by at least one cable (conductor 26) (Non-Final Act. 15 (citing Mobley ¶¶17–26; Fig. 1)). The Examiner acknowledges that Mobley does not disclose that conductor 26 is “disposed under a surface of a gasket of the door, the cable being substantially flat so as to permit the surface of the gasket to seal against the cable and a surface of the cabinet without an air gap” (*id.* at 16). However, the Examiner opines that this technique “goes backward in the prior art” and that Kates discloses a more efficient arrangement (*id.*).

The Examiner has not established a *prima facie* case of obviousness. Therefore, we do not sustain the Examiner’s rejection of claim 7 under 35 U.S.C. § 103(a).

Dependent Claims 8 and 9

Claim 8 depends from claim 1, and recites that “responses further include a verification that the handheld computing device was at a location in the respective food service establishment.” Claim 9 depends from claim 8, and recites that “the verification comprises an input of an identifier at the location by the handheld computing device.”

Appellants reproduce the Examiner’s rejection of claim 8, as set forth in the Non-Final Office Action, and summarily assert that Mobley, on which the Examiner relies, “does not show or suggest verifying that a handheld computing device was at any particular location” (App. Br. 27).

Appellants’ assertion does not rise to the level of a substantive argument for patentability. *Cf. In re Lovin*, 652 F.3d at 1357. Therefore, we sustain the Examiner’s rejection of claim 8 under 35 U.S.C. § 103(a). We

also sustain the rejection of claim 9, which is not argued separately except based on its dependence from claim 8 (App. Br. 28).

DECISION

The Examiner's rejection of claims 1–20 under 35 U.S.C. § 101 is affirmed.

The Examiner's rejection of claims 1–3, 5, 6, 8–11, 13–16, and 18–20 under 35 U.S.C. § 103(a) is affirmed.

The Examiner's rejection of claims 4 and 7 under 35 U.S.C. § 103(a) is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED